

Entered - 10/07/09 - sb
CL09L0740- DIANNE C. MITCHELL

CLAIM OF: ATLANTA PENSION FUNDS
MEMBERSHIP ASSOCIATION,
Through its attorney,
Matthew C. Klase
1900 The Exchange, SE
Suite 480
Atlanta, Georgia 30339

For damages alleged to have been sustained as a result of
misrepresentations of retiree health insurance benefits.

THIS ADVERSED REPORT IS APPROVED

BY: _____

JERRY L. DELOACH
DEPUTY CITY ATTORNEY

ADVERSE REPORT

PUBLIC SAFETY &
LEGAL ADMINISTRATION COMMITTEE

DATE: 2/9/10

CHAIR: _____

FEB 15 2010

RECEIVED BY
CITY COUNCIL

FEB 15 2010

ADVERSED BY
CITY COUNCIL



CITY OF ATLANTA
OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC
MUNICIPAL CLERK

February 25, 2010

55 TRINITY AVENUE, S.W.
SUITE 2700
ATLANTA, GEORGIA 30303
Main (404) 330-8033
Fax (404) 658-8103
Email municipalclerk@atlantaga.gov

Mr. Matthew C. Klase, Esquire
1900 The Exchange, SE
Suite 480
Atlanta Georgia 30339

10-R-0260

RE: Atlanta Pension Funds Membership
Association

Dear Mr. Klase

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on February 15, 2010. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the **City Attorney's Office/Claims Division at (404) 330-6400.**

Yours very truly,

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: Claims Division/Law Department

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 09L0740

Date: January 27, 2010

Claimant /Victim ATLANTA PENSION FUNDS MEMBERSHIP ASSOCIATION
BY:(Atty)(Ins. Co.) Matthew C. Klase
Address: 1900 The Exchange, SE, Suite 4800, Atlanta, Georgia 30339
Subrogation: Claim for Property damage \$ Not Stated Bodily Injury \$
Date of Notice: 10/05/09 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence Undisclosed Place: 55 Trinity Avenue
Department Human Resources Division:
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant allege that misrepresentations were made regarding retiree health insurance benefits. However, the claimants have filed a lawsuit to resolve the issues raised in the claim.

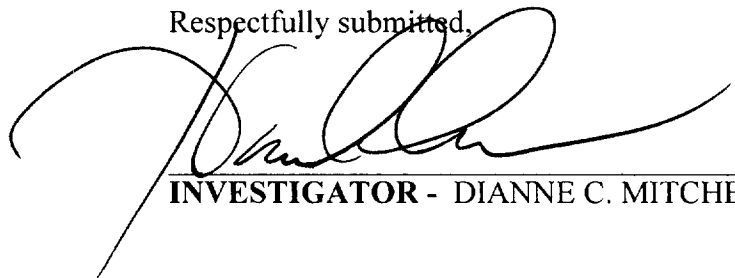
INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,



INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: General Fund Water & Sewer Aviation
Claims Manager: Concur/date 01/27/10
Committee Action: Council Action

WEBB, KLASSE & LEMOND, L.L.C.

ATTORNEYS AT LAW

1900 THE EXCHANGE, S.E. • SUITE 480 • ATLANTA, GEORGIA 30339

(770) 444-9325 • (770) 444-0271 (facsimile)

Author's Direct Dial:
(770) 444-0998

ENTERED - 10-7-09 -SB
09L0740 - D. MITCHELL

Email Address:
Matt@WebbLLC.com

September 22, 2009

VIA FACSIMILE & U.S. MAIL

Ms. Lisa M. Borders – Council President
City of Atlanta
55 Trinity Avenue, S.W.
Suite 2900
Atlanta, GA 30303-3584

Mitchell
10/07/09
R

Re: O.C.G.A. § 36-33-5 Demand

Our client: Atlanta Pension Funds Membership Association

Dear Ms. Borders:

This office represents the Atlanta Pension Funds Membership Association (“APFMA”) as well as a class of currently unnamed City retirees in connection with the injuries and damages its members and the class members sustained as the result of false representations made by the City concerning City retiree health insurance benefits.¹ Pursuant to O.C.G.A. § 36-33-5, please accept this correspondence as notice of these claims and a demand for relief.

A. Factual Background.

The APFMA has many members that faithfully served the City for decades. Hundreds of these members, like the rest of the class, were originally hired by the City prior to April 1, 1986 and are thus not automatically Medicare-eligible.

On June 19, 2008, the City passed Ordinance No. 08-O-1024. This Ordinance was an attempt by the City to lower the amount of money it contributes to health insurance and benefits for City retirees and their families. The Ordinance states as follows:

SECTION 1 – Effective September 1, 2008, the City will require Medicare eligible retirees, their spouses and dependents to obtain both Part A and B of Medicare at the time of eligibility in order to receive City of Atlanta retiree

¹ The APFMA is an association consisting of more than 1,000 City of Atlanta retirees as well as their families and beneficiaries. The APFMA exists for the purpose of ensuring that City pension and health insurance benefits are administered in a fair and legal manner.

benefits. Medicare eligible retirees will be offered a group Medicare Advantage Plan or similar benefits plan. Employees hired before April 1, 1986 who are not Medicare eligible will receive the same benefit plan as offered active employees.

Pursuant to the plain language of this Ordinance, persons hired by the City prior to April 1, 1986 ("pre-1986 retirees") were not required to become Medicare eligible and accept one of the Medicare Advantage Plans offered by the City. Nonetheless, the City misrepresented this fact to hundreds of pre-1986 retirees, including numerous APFMA members.

For instance, in written notices and at the open enrollment informational meetings, City representatives encouraged pre-1986 retirees, including numerous APFMA members, to obtain Medicare Part A and B coverage or face the prospect of losing their benefits. The City representatives, however, failed to disclose that these individuals were *not required* by the new legislation to take any steps to change their current insurance coverage. The City's misrepresentations led many pre-1986 retirees to unnecessarily incur expenses to become Medicare-eligible and switch to a City-approved group Advantage Plan, for which they would be charged higher monthly premiums.² The City's motivation in failing to make this important fact clear is obvious – to conserve City funds by passing the majority of the expenses associated with retiree health coverage to the federal government. While cost-saving by the City is laudable, such savings should not be achieved by imposing an undue burden on fixed-income retirees.

B. Summary of Claims and Demand.

The foregoing conduct, at the very least, constitutes (i) fraud; (ii) intentional misrepresentation; (iii) negligent misrepresentation; (iv) failure to disclose; (v) breach of contract; and (vi) breach of other statutory and common law protections.

The APFMA demands on behalf of its members and the class that the City make all aggrieved retirees whole by: (1) sending a curative notice to all possibly affected retirees providing an accurate statement of the law; (2) issuing full reimbursements to those class members in an amount equal to the costs which they unnecessarily incurred (and will incur) as a result of enrolling in Medicare; and (3) reimbursing the APFMA for the attorneys' fees and expenses it has incurred to date.

² The APFMA became aware of the City's misrepresentations in or about April 2009 after numerous members who had been hired before April 1986 complained at APFMA meetings about being forced to enroll in Medicare Part A and B coverage and switch to a new insurance plan. In most cases, the premiums for the new plans were hundreds of dollars more per month than what the aggrieved APFMA members had previously paid under their old plans.

Please do not hesitate to contact me if you would like to discuss this matter further. If we do not reach a reasonable accommodation by October 23, 2009, the Complaint will be filed.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Klase". The signature is fluid and cursive, with the first name "Matthew" and last name "Klase" clearly distinguishable.

Matthew C. Klase

MCK/tg

RCS# 70
2/15/10
2:39 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

ADOPT

YEAS: 12
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 4
EXCUSED: 0
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Bond
NV Hall	Y Wan	Y Martin	NV Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	NV Sheperd	NV Mitchell

CONSENT I

		02-15-10
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 10-O-0163	36. 10-R-0160	53. 10-R-0260
2. 10-O-0167	37. 10-R-0244	54. 10-R-0261
3. 10-O-0229	38. 10-R-0245	55. 10-R-0262
4. 10-O-0317	39. 10-R-0246	56. 10-R-0263
5. 10-O-0153	40. 10-R-0247	57. 10-R-0264
6. 10-O-0154	41. 10-R-0248	58. 10-R-0265
7. 10-O-0155	42. 10-R-0249	59. 10-R-0266
8. 10-O-0156	43. 10-R-0250	60. 10-R-0267
9. 10-O-0158	44. 10-R-0251	61. 10-R-0268
10. 10-O-0159	45. 10-R-0252	62. 10-R-0269
11. 10-O-0157	46. 10-R-0253	63. 10-R-0270
12. 10-R-0242	47. 10-R-0254	64. 10-R-0271
13. 10-R-0243	48. 10-R-0255	65. 10-R-0272
14. 10-R-0124	49. 10-R-0256	66. 10-R-0273
15. 10-R-0282	50. 10-R-0257	67. 10-R-0274
16. 10-R-0283	51. 10-R-0258	
17. 10-R-0284	52. 10-R-0259	
19. 10-R-0285		
20. 10-R-0286		
21. 10-R-0287		
22. 10-R-0295		
23. 10-R-0299		
24. 10-R-0300		
25. 10-R-0301		
26. 10-R-0302		
27. 10-R-0233		
28. 10-R-0234		
29. 10-R-0235		
30. 10-R-0236		
31. 10-R-0237		
32. 10-R-0238		
33. 10-R-0239		
34. 10-R-0240		
35. 10-R-0316		